Supreme Court of the United States.

No. 159.—October Term, 1904.

Abram P. Thompson, Plaintiff in Error, *vs.* Joseph J. Darden. } In error to the Supreme Court of Appeals of the State of Virginia.

[May 15, 1905.]

Mr. Justice White delivered the opinion of the Court.

The law of the State of Virginia imposes compulsory pilotage on all vessels inward bound from sea through the Virginia capes, other than coasting vessels having a pilot's license, no matter to what port or point the vessel may be bound, and likewise imposes compulsory pilotage on all vessels outwardbound through the capes. The compulsory pilotage inward bound from the sea extends no further than to Newport News, Smith's Point, Yorktown or Norfolk, and the compulsory pilotage outwardbound through the capes commences at said points respectively. In the inland waters of Virginia above the points named compulsory pilotage does not prevail, but pilotage is regulated and rates therefor are provided, the duty being imposed, except where the statutes otherwise provide, of using only a licensed Virginia pilot if the services of a pilot are taken. (Virginia Code of 1887, sections 1963, 1965, 1966, 1978 and 1900.) Reference is made in the brief of counsel for the defendant in error to Virginia colonial legislation, (1775,) imposing compulsory pilotage on vessels inwardbound from sea through the capes, accompanied with the statement, which is unchallenged, that from that time to the present date there has been no period when compulsory pilotage regulations of a like nature have not prevailed in Virginia. The contentions of the plaintiff in error arising on this record assail the validity of the pilotage laws now in force. The controversy thus arose.

In August, 1902, the schooner William Neely, engaged in the coastwise trade between New England and Virginia, Abram P. Thompson, master, when bound in from sea to Norfolk, was offered by Joseph J. Darden, a licensed Virginia pilot, his services, which were declined. Thereupon Darden, the pilot, sued Thompson, the master, in the court of law and chancery of Norfolk, for his pilotage charge. Thompson demurred on the ground that the Virginia statutes as to pilotage were void because repugnant to the Constitution and laws of the United States, for various reasons, which were specified in the demurrer. The trial court sustained the demurrer. Darden, taking the record to the Court of Appeals of Virginia, ap-

plied for a writ of error, which was not a matter of right. The court allowed the writ, heard the cause, and, for reasons expressed in a full and careful opinion, reversed the judgment and remanded the cause for a new trial. (101 Va. 635.) At the new trial Thompson reiterated, by way of offers of evidence and other proceedings, the objections which had been expressed in the demurrer, and preserved his rights by exceptions taken to the action of the trial court which adjudged against him. He then carried the record to the Court of Appeals and applied for a writ of error, which was refused, and thereupon this writ was sued out.

In the argument at bar seven grounds of error are stated, and in referring to them generally many minute suggestions are made concerning the pilotage statutes, by way of indicating that discrimination arises from them. They mainly relate to the statutes regulating pilotage in the internal waters. Whilst we have given these suggestions our attention, we content ourselves with saying that we deem them to be devoid of merit. The more so because in the written argument the discussion is expressly limited to the first, second and fifth grounds of alleged error. These we proceed to consider.

1st. "This statute violates article 1, section 9, clause 6, of the Federal Constitution, which provides that no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." In effect this proposition denies the power of Congress to permit the several States to adopt pilotage regulations, despite the recognition of that authority by Congress as early as 1789, (Rev. Stat. 4235,) and the repeated adjudications of this court recognizing and upholding the practice on the subject which has obtained from the beginning. (*Olsen* v. *Smith*, 195 U. S. 332, and authorities there cited.)

2d. "The Virginia pilot law is in conflict with section 4237 of the United States Revised Statutes." The section in question was quoted and commented on in *Olsen* v. *Smith*, *supra*, and avoids the provisions of all State regulations making "any discrimination in the rate of pilotage or half pilotage between vessels sailing between the ports of one State and vessels sailing between the ports of different States, or any discrimination against vessels propelled in whole or in part by steam, or against national vessels of the United States." It cannot be said that the pilotage charge for vessels bound in and out through the capes is in and of itself discriminatory, since it imposes a like compulsory pilotage charge upon all vessels bound in and bound out. Speaking of the requirements of the statute, the Supreme Court of Appeals of Virginia said in its opinion in this case:

"By the provisions of the sections of the code quoted all vessels (except coastwise vessels with a pilot license) inward bound from the sea to Smith's Point, Yorktown, Newport News or Norfolk, or any intermediate point and all such vessels outward bound to the sea from Smith's Point, York-

town, Newport News or Norfolk, or any intermediate point, are subject to the compulsory regulations and rates therein provided. All vessels are subject to the same regulations and under the same circumstances and conditions are required to pay the same fees."

The arguments made to support the assertion that the pilot laws conflict with the act of Congress are twofold. First. As the State of Virginia has no appreciable commerce from her own ports inwardbound through the capes, therefore there is discrimination. Second. As Virginia has chosen by her legisation not to subject commerce on her internal waters to a compulsory charge for pilotage, therefore there is a discrimination in favor of commerce on the internal waters of Virginia and against commerce bound in and out through the capes from and to the sea. In other words, the proposition is that the State of Virginia was without power to make an undiscriminating regulation as to pilotage for ships bound in and out through the capes, unless a like regulation was made applicable to all the internal waters within the State. This is attempted to be sustained by contending that the navigation of the internal waters of Virginia is more tortuous than is the navigation in and out of the capes, and other suggestions of a kindred nature.

But the unsoundness of the proposition is made manifest from its mere statement. In effect, it but denies the power of Virginia to regulate pilotage, and presupposes that courts are vested with authority to avoid the pilotage regulations adopted by the States, which do not discriminate as to commerce to which they apply, simply because it is deemed they are unwise or unjust. As pointed out in *Olsen* v. *Smith*, an objection based on the assumed injustice of a pilotage regulation does not involve the power to make the regulation. Objections of this character, therefore, if they be meritorious, but concern the power of Congress to exercise the ultimate authority vested in it on the subject of pilotage.

3d. "The pilot law violates section 4236 of the Revised Statutes, which provides: 'The master of any vessel coming into or going out of any port situate upon waters which are the boundary between two States, may employ any pilot duly licensed or authorized by the law of either of the States bounded on such waters to pilot the vessel to or from such port.'" It is said that whilst it may be difficult to say that the waters of the Chesapeake Bay between the capes constitute a boundary, still it is possible to so conclude. We observe concerning this contention that it does not appear to have been raised in the courts below. It is accompanied with no suggestion that the State of Maryland has ever attempted to regulate pilotage between the capes of Virginia, to which the Virginia statute relates, or that any Maryland pilot offered his services. The proposition, therefore, rests upon a series of mere conjectures, which we cannot be called upon to investigate or decide.

Judgment affirmed.